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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,561	11/16/2000	Gregory Ashton	AA315X/KL	6013

27752 7590 12/12/2007  
THE PROCTER & GAMBLE COMPANY  
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CINCINNATI, OH 45224

EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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12/12/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/700,561

Applicant(s)

ASHTON ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,4-5,7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4,5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

In view of the appeal brief filed on August 14, 2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER



***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4 – 5 and 7 – 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Buell et al. (US 5,569,234).

With respect to claim 1, Buell et al. (hereinafter “Buell”) discloses a disposable garment having a front region, a back region, a crotch region between the front region and the back region (figure 2), the disposable garment comprising:

a chassis (14) having a topsheet (24), a backsheet (26) joined with the topsheet, and an absorbent core (28) interposed between the topsheet and the backsheet, the chassis having a central panel (56) having a waist edge and side edges, an ear panel (64, 64') having a waist edge and a leg opening edge, wherein said ear panel waist edge has a first lateral width, and said ear panel leg opening edge has a second lateral width, said second lateral width greater than said first lateral width (figure 1A), said chassis further having a waistband panel (60, 60') in the front region and the back region, wherein the ear panel extends laterally outwardly from each side edge of the central panel, and the waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel (figure 1A),

a waist elastomeric material joined to and extending continuously along the waistband panels in the front region and the back region so as to form a continuous extensible waistband in the front region and the back region (col. 7, lines 39 – 41),

a side elastomeric material joined to the ear panel so as to form extensible ears wherein the side elastomeric material is disposed over substantially all of the ear panel to provide extensibility extending from said leg opening edge to said waist edge, and wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed so as not to overlap each other (col. 12, line 65 to col. 13, line 8), and

seams (32) joining the ear panel to a corresponding portion in the opposite front or back region so as to form two leg openings and a waist opening such that the extensible waistbands form a continuous extensible waist feature as set forth in figure 1.

As to claim 4, Buell discloses a disposable garment wherein the extensible ear is formed from a "zero strain" stretch laminate as set forth in col. 13, lines 8 - 14.

With reference to claim 5, Buell discloses a disposable garment wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region (60), the other of which is joined to the waistband panel in the back region (60'), wherein the two elements are connected to each other at the seams as set forth in figure 1A.

Regarding claim 7, Buell discloses a disposable garment wherein the backsheet comprises an inner barrier film and a nonwoven outer cover, and wherein the nonwoven

outer cover is superposed outside the inner barrier film as set forth in col. 10, lines 24 - 43.

As to claim 8, Buell discloses a disposable garment wherein the extensible waistband comprises an extended portion of the outer cover and the waist elastomeric material as set forth in col. 16, lines 1 – 29.

As to claim 9, Buell discloses a disposable garment wherein the extensible ear comprises an extended portion of the outer cover and the waist elastomeric material as set forth in col. 21, lines 49 – 63.

With respect to claim 10, Buell discloses a disposable garment wherein the waist elastomeric material is superposed inside an innermost surface of the garment as set forth in figure 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Michele Kidwell  
Primary Examiner  
Art Unit 3761